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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD RELATIONSHIP)
OF D.N. AND S.N., MINOR CHILDREN, AND)
THEIR FATHER, DEREK WILSON,)

DEREK WILSON,)

Appellant-Respondent,)

vs.)

MARION COUNTY DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.,)
(Guardian ad Litem Below))

No. 49A04-0701-JV-62

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Viola Taliaferro, Senior Judge
Cause No. 49D09-0603-JT-11895

September 18, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Derek Wilson (“Father”) appeals the termination of his parental rights in Marion Superior Court, arguing that the Marion County Department of Child Services (“MCDCS”) presented insufficient evidence to support the termination. We affirm.

Facts and Procedural History

On March 21, 2005, MCDCS filed a petition alleging that Father and Valerie Neville’s¹ two daughters, D.N., born January 7, 2003, and S.N., born February 14, 2005, were children in need of services (“CHINS”) . At a fact-finding hearing conducted on June 8, 2005, Father admitted that the children were in need of services. The trial court ordered that D.N. continue to be placed in emergency shelter care and that S.N. be placed in therapeutic foster care. Both girls remained in foster care throughout these proceedings. Following an evidentiary hearing conducted over several days in November and December 2006, the trial court issued the following findings and conclusions:

7. [S.N.] was placed in Riley Hospital for Children following her birth because she had a feeding dysfunction which required feeding by the mouth and through a feeding tube. Prior to [S.N.’s] release, Riley Hospital staff filed a [] report of possible child neglect with MCDCS because [Father] and [Mother] did not fully understand how to feed [S.N.].

* * *

11. A petition alleging that [D.N.] and [S.N.] were children in need of services (CHINS) was filed in the Marion Superior Court...[and] contained the following allegations: [Mother] and [Father] were unable to appropriately care for [D.N.] and [S.N.]; [S.N.] was diagnosed as failure to thrive at birth and required special feedings; [S.N.] was ready to be released from the hospital but [Father] had difficulty feeding her and [Mother] could not feed her at all; [Mother] and [Father] lived in a one-room apartment

¹ Neville consented to the adoption of D.N. and S.N. and is not a party to this appeal.

with no crib for [S.N.] and no separate bed for [D.N.]; and [Mother] and [Father] were unable to show that they had diapers or appropriate food for [D.N.] or any necessary items in the home for [S.N.].

* * *

16. [Father] completed the [court-ordered] Parent Assessment; the Drug and Alcohol Assessment; submitted to random drug testing; visited the children on a regular and consistent basis; participated in home-based counseling and followed the recommendations of the counselor; and maintained fairly good contact with the caseworker.

17. [Father] last used marijuana in March 2005. He attended all the drug education classes, participated in both the group and individual sessions of the Level I program for ten to twelve weeks and attended the seven "12 Step" AA meetings required by the program. [Father] produced consistently negative drug screens. He successfully completed the drug and alcohol program.

18. [Father] was referred for home-based services on September 20, 2005 and began the services on September 25, 2005. The counselor...conducted weekly sessions at [Father's] residence. The children were transported to [Father's] home by the foster mother. The purpose of the sessions was to observe the interactions between [Father] and the minor children and to develop a plan for reunification that included topics of parenting, finances and budgeting. [Father] was referred for anger management classes. Reports of the sessions were forwarded monthly to MCDCS.

19. The visits with the children were initially one hour in length but gradually increased to four hours for each session. [The counselor] attempted to help [Father] organize the home for visits with the children at different times of the day. [The counselor] developed a routine to be used when visits occurred at different times of the day. [Father] would follow a routine once it was learned, but he had difficulty using the routine that was appropriate for a particular time of the day.

20. [The counselor] needed more information about [Father's] mental abilities so that she could provide appropriate services for him. On October 12, 2005, [the counselor] made a request to MCDCS to make a referral for [Father] to undergo a psychological evaluation.

21. During a session in [Father's] home on August 25, 2006, [Father] became angry with [the counselor]. It was then necessary to have the visits take place at the Mentor office where [the counselor] could observe the interaction through a window from an adjoining room. This necessitated a change in the visitation schedule from four hours once each week to two days each week with each visit lasting two hours.

* * *

25. [D.N.] was placed in the present foster home on January 21, 2006. One week after the placement, India Adams, foster mother, learned that [D.N.] had some serious sexual behaviors. She observed [D.N.] masturbating and

touching [S.N.] and her foster sister inappropriately in their private areas. [D.N.] also made similar attempts to touch the foster mother and other adults inappropriately. India Adams contacted MCDCS and requested counseling for [D.N.].

26. In July 2006 India noticed that [D.N.] was scratching her genital area. India inspected [D.N.] and found bumps on her vagina. [D.N.]’s doctor said that the bumps were consistent with herpes. Consequently, India takes extreme precautions with [D.N.] to prevent the infection from spreading. In July 2006, India told [Father] that it was possible that [D.N.] had herpes.

* * *

28. Dana Haran is employed by Midtown Community Mental [Health Center] as a licensed marriage and family therapist. She began working with [D.N.] in May 2006 to address her sexual behavior problems. It was difficult for Dana to work with [D.N.] because she was only three years of age, had limited communication skills and was developmentally delayed. Dana could not determine what had caused [D.N.]’s sexual behavior but testified that it could have been sexual molestation. Safety, appropriate touching and boundaries were the areas to be covered. ...

29. Dana testified that there is a possibility that [D.N.] might show improvement with proper guidance from the foster mother. Before improvement can be shown, [D.N.] must live in an extremely stable home under close supervision. Great care must be exercised to keep [D.N.] away from strangers because she is vulnerable to be again victimized.

30. Linn LaClave is employed by Indiana University as a clinical psychologist and as a consultant at Midtown. She works with children under the age of [six]. Dana Haram referred [D.N.] to Linn for treatment and assessment. During the first assessment, Linn made the following observations: [D.N.] was anxious; slow to “warm up”; could not copy vertical and horizontal marks or a circle; impoverished vocabulary; and had poorly developed comprehension.

31. Linn testified that it was possible that [D.N.]’s speech development, cognitive development and global understanding of the world was due to mental retardation; however, formal testing was not possible due to [D.N.]’s young age and limitations. Her recommendations for [D.N.] were speech therapy, play therapy to develop imaginative skills, rewards for appropriate behavior and care given by the least number of people due to her anxiety level.

* * *

34. Joyce Cuntz is a Social Worker at the St. Mary’s Child Center. She tested [D.N.] and engaged her in play therapy for six or seven sessions. The main purpose of play therapy is to assess a child’s emotional needs. [D.N.] was shown a number of posters and picked out the poster that depicted fear. [D.N.] is intensely afraid of many things. Trust is developed during the first year of life. A loss of trust may account for [D.N.]’s level

of fear. Joyce also testified that [D.N.] needs an extended period of security, stability and safety.

* * *

36. The psychological evaluation [of Father] was conducted on November 15, 2005 by Dr. Mary M. Papandria....

* * *

39. Based on the test results, the Diagnosis Impressions were as follows: Axis I: H/O Cannabis Abuse; and Axis II: Mild Mental Retardation and Personality Disorder NOS with narcissistic, avoidant and schizoid features.

40. Dr. Papandria testified that [Father]'s IQ test score is 64, and the overall IQ is in the Mild Mental Retardation range. His reading skill is at the 5th grade level and his arithmetic and spelling skills are at the 6th grade level. He is functionally illiterate.

41. Based on the Personality test results, [Father] tended to appear narcissistic. Dr. Papandria testified that a narcissistic person is self-focused with a grandiose sense of self-importance and a sense of entitlement. Narcissistic persons are emotionally immature which interferes with the need to take responsibility for someone else. The narcissistic person tends to lack empathy, can be envious and jealous of others.

42. Dr. Papandria explained that a person with an avoidance personality would avoid relationships that might generate criticism. A person with a schizoid personality does not want to engage in relationships because there are too many chances to be hurt or rejected. Emotions can be restricted, overly controlled and emotionally rigid.

43. Dr. Papandria testified that [Father]'s ability to effectively learn is limited by his tendency to take in too little information and then "coming to conclusions hastily, after only cursory attention to relevant consideration." Based on his level of functioning, [Father] would experience difficulty dealing with the complicated situations. [Father] lacks the flexible brain that is needed to respond adequately to a complicated situation. When faced with a complicated situation, [Father] may tend to simplify it in order to understand it.

44. Dr. Papandria stated that [Father] needs intensive services. However, the intensive personality services that [Father] needs would be doomed by his cognitive inability to grasp what he needs to do to make changes. She recommended that visitation with his children should be supervised by another responsible adult every time he is with them until he demonstrates good problem-solving and coping abilities.

45. According to Dr. Panandria, [Father] would have difficulty parenting a child with special needs, especially if danger were involved. [Father] has attentional problems which are separate from his psychological problems. For example, if it is not apparent that a child has been injured, he may not notice a problem that the child is facing when it is first presented. He would have a tendency to simplify the problem in order to understand it.

Creativity is the higher level of cognitive skills. [Father] does not possess this cognitive skill which would present problems for children if they were placed in his care.

46. ...Dr. Papandria testified that [Father] has difficulty with complicated situations. She testified that parenting a child with special needs is complicated.

* * *

53. [Father] complied with most of the court-ordered services. Despite his compliance, [the MCDCS Family Case Manager] believes that [Father]'s ability to parent his children appropriately has not been improved through participation in the services. Her concern is that [Father] is prevented from parenting the children effectively because of his limited mental capacity. [D.N.] requires intense supervision and also has an infection. When [the MCDCS Family Case Manager] discussed [D.N.]'s herpes infection with [Father], he thought the condition "would go away." There was a discussion about [D.N.]'s herpes at a case management meeting in October 2006. [Father]'s expressed interest in the topic was whether it "would help" his case.

54. [Father]'s visitations with the children have always been supervised since the CHINS petition was filed. Despite the completion of parenting classes, [Father] has not shown the ability to exercise visitation with the children without adult supervision.

* * *

59. ...[The Guardian ad Litem's] issue of concern was not on compliance with services but in determining whether [Father] had the ability to care for [D.N.] and [S.N.].

60. [The Guardian ad Litem] testified that she does not believe that [Father] has the ability to properly care for [D.N.] and [S.N.]. [The Guardian ad Litem] believes that the children are receiving good care from India and that the parent-child relationship between [Father] and the minor children should be terminated. She believes that the recommendation of the MCDCS for the adoption of [S.N.] and [D.N.] is in their best interests.

* * *

69. [Father] testified that his relationship with [Mother] will continue even though she has terminated her parental rights to [D.N.] and [S.N.]. During the six years that they have been a couple, [Mother] has alternated living with her mother for a period of weeks and with [Father] for a period of week[s]. The legal termination of her rights to parent the children will not prevent her from continuing to be identified by the children, relatives and friends as the children's mother. It appears clear that she will fulfill the role of a parent/caretaker if she were to reside in the home with [Father] and the children.

70. There are serious concerns about [Mother]'s suitability as a caretaker of the children if they were placed in [Father]'s care. Dr. Papandria

conducted a psychological evaluation of [Mother] on November 15, 2005. [Mother]'s IQ score was 66. She functions at the 2nd grade reading, spelling, and arithmetic levels. Based on these significant cognitive problems, [Mother] will need assistance raising children appropriately and with many day-to-day living tasks. Dr. Papandria recommended that visitation with [D.N.] and [S.N.] "should be supervised by a responsible adult every time she is with them, until she demonstrates good problem-solving and coping abilities." Dr. Papandria also strongly advised that [Mother] should "undergo individual psychotherapy, but because of her limited cognitive skills, is probably not a candidate."

* * *

74. ...[Father] completed the court-ordered services, but there is little or no evidence that he learned new skills from the offered services.

75. When [Father] exhibited difficulty following simple directions and a depth of understanding about the subject matter, he was referred for a psychological evaluation.

76. The test results revealed that [Father] is mildly mentally retarded with an IQ of 64.

77. From September 2005 up to December 2006, [Father] received ongoing case management, visits with his children, parenting classes, anger management and other services. In June 2006, [Father] could not make decisions about the feeding of the children and putting them to bed for a nap without direction from the home-based counselor. In August 2006, the home[-]based[] counseling sessions were moved to an office because of anger directed to the home-based counselor by [Father].

78. Unsupervised visitation was never recommended by the [h]ome-[b]ased counselor or the MCDCS Family Case Manager. [Father] did not demonstrate at any time during the period services were provided that he could visit with the children outside the presence of a responsible adult.

79. The reason the children were not reunited with [Father] was not because he did not complete services as ordered. It was because he does not have the mental capacity to successfully complete the services. The goal was reunification with the minor children. Reunification could not occur until the services had been completed to the point where reunification with the minor children was in their best interests.

80. Continuation of the parent-child relation[ship] is not in the best interests of [D.N.] and [S.N.].

81. The evidence presented during the hearings supports a finding that [Father] would have difficulty parenting children who were normally developed and would be unable to parent children with special needs.

82. The inability of [Father] to provide the supervision and stability for his children is contrary to the best interests of [D.N.] and [S.N.].

* * *

88. Based on the history of his mental health condition and anger problems, [Father] would [be] unable to provide the supervision, security, stability and safety [D.N.] and [S.N.] need. [Father] was able to learn certain routines, but he lacked the ability to apply what he had learned to events that occur daily in the lives of children.

* * *

91. [Father] does not have a carefully considered plan for the care of the children if they are returned to his care. [A g]eneral statement that friends and relatives are willing to assist with childcare is not an acceptable plan for childcare. There was no contact between MCDCS and [Father]'s siblings during the CHINS proceeding and no testimony was received from any of his siblings during the hearing in this case. [D.N.] is a special needs child who should not be left in the care of any person who is not capable of providing the supervision and safety that she requires.

* * *

93. Termination of the parent-child relationship is in the best interest of [D.N.] and [S.N.]. [Father] has completed the offered services to the best of his ability. There is a reasonable probability that the continuation of the parent-child relationship would not result in reunification within a reasonable period of time. The children are entitled to permanency. Their needs are paramount.

Appellant's App. pp. 12-24.

Father now appeals the termination of his parental rights.

Standard of Review

In deference to the trial court's unique position to assess the evidence, when reviewing termination proceedings on appeal, we will neither reweigh the evidence, nor judge the credibility of witnesses. Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005). We will consider only the evidence most favorable to the trial court's judgment and the reasonable inferences to be drawn therefrom. Id. Where the trial court has entered findings of fact, we will not set aside the trial court's findings and judgment unless they are clearly erroneous. Id. "A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it." In re

B.D.J., 728 N.E.2d 195, 199 (Ind. Ct. App. 2000) (quoting Matter of D.G., 702 N.E.2d 777, 780 (Ind. Ct. App. 1998)). If the evidence supports the trial court's decision, we must affirm. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied.

Discussion and Decision

The involuntary termination of parental rights is the most extreme sanction a court can impose; therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. "The purpose of terminating parental rights is not to punish parents but to protect their children." In re M.M., 733 N.E.2d at 12 (quoting In re A.N.J., 690 N.E.2d 716, 720 (Ind. Ct. App. 1997)). Parents have a constitutionally protected interest in the right to establish homes and raise their children; however, those rights may be terminated when parents are unwilling or unable to meet their parental responsibilities. In re T.F., 743 N.E.2d at 773. Parents' rights are subordinate to the interest of protecting the welfare of the child in determining an appropriate disposition of a petition to terminate parental rights. In re M.M., 733 N.E.2d at 12.

Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). The trial court need not wait until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Id. A parent's habitual patterns of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d at 13.

To effect the involuntary termination of a parent-child relationship, MCDCS must establish that:

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
 - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made;
 - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied;
 - or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interest of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (1998 & Supp. 2007).

MCDCS must establish these elements by clear and convincing evidence. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. “Clear and convincing evidence need not reveal that ‘the continued custody of the parents is wholly inadequate for the child’s very survival.’” Bester, 839 N.E.2d at 148 (quoting Egly v. Blackford County Dep’t of Pub. Welfare, 592 N.E.2d 1232, 1233 (Ind.1992)). Rather, it is sufficient to show by clear and convincing evidence that “‘the child’s emotional and physical development are threatened’ by the respondent parent’s custody.” Id. (quoting Egly, 592 N.E.2d at 1234). Again, the purpose of terminating parental rights is not to

punish parents but to protect children. In re A.I., 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), trans. denied.

Father contends that MCDCS failed to present clear and convincing evidence that the continuation of the parent-child relationship poses a threat to the well-being of the children. See I.C. § 31-35-2-4(b)(2)(B)(ii). Specifically, he argues that the safety and security issues MCDCS raised “were more abstract than actual.” Br. of Appellant at 8.

The trial court made extensive and detailed findings, which Father does not challenge. Rather, he contends that the findings do not support the conclusion that continuation of the parent-child relationship poses a threat to the well-being of the children. In support of this contention, Father points to his compliance with services, his efforts toward reunification, and how, despite difficulties, he “hung in there the best way [he] could[.]” Tr. p. 380. The trial court acknowledged Father’s compliance with services, and we likewise find his efforts laudable. However, we may reverse only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made. Egley, 592 N.E.2d at 1235.

Here, MCDCS presented clear and convincing evidence that, despite Father’s efforts, his limited cognitive abilities and personality disorder prevent him from being a safe and effective parent to D.N. and S.N. The psychiatrist who evaluated Father testified “the fact that there is cognitive impairment and impairment of his attentional abilities and then impairment of his personality functioning...that combination of things is more alarming than one might be in isolation of the other.” Tr. p. 173. She opined that the combination of Father’s impairments “could be a recipe for disaster. For children in his

care.” Tr. p. 174. The family’s home-based counselor testified that she had never recommended unsupervised visits and did not anticipate that even with further counseling that goal could be reached. Tr. p. 45. In light of this evidence, we cannot conclude that the trial court’s judgment is clearly erroneous.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.